THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

+Writ Petition Nos.17904, 17195 & 17938 of 2007

% 11.09.2007

Between:

Syngenta Crop Protection Pvt. Limited,
rep. by its Commercial Manager,
Hyderabad, and others

…Petitioners

AND

Government of Andhra Pradesh,
Rep. by its Principal Secretary,
Agriculture Department, and another.

.....Respondents

! COUNSEL FOR Petitioners: Sri S. Niranjan Reddy
^ COUNSEL FOR RESPONDENTS: G.P. for Agriculture

< Gist:

> Head Note:

? CITATIONS:

THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

Writ Petition Nos.17904, 17195 & 17938 of 2007

Dated 11-09-2007

Between:

Syngenta Crop Protection Pvt. Limited,
rep. By its Commercial Manager,
Hyderabad, and others.

…Petitioners

And

Government of Andhra Pradesh,
rep. by its Principal Secretary, Agriculture Department,
and another.

…Respondents

THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

Writ Petition Nos.17904, 17195 & 17938 of 2007

COMMON JUDGMENT:

In this batch of three writ petitions, the validity of the notification dated 25-07-2007, issued by the Government of Andhra Pradesh, the 1st respondent herein, in exercise of powers under Section 27 of the Insecticides Act, 1968 (for short '*the Act*');
is challenged.

The petitioners are the manufacturers, or distributors, as the case may be, of different varieties of insecticides. Through the impugned notification, the 1st respondent prohibited the supply, distribution, sale, and use of insecticides, known as '*Synthetic Pyrethroids*', for a period of 60 days, in the State of Andhra Pradesh. The notification was published in the A.P. Gazette.

The petitioners contend that the Synthetic Pyrethroids are used, mostly for protection of commercial crops, such as cotton, chilly, vegetables, and for the past several years, the farmers were successful in controlling various plant diseases by using the said insecticides. It is stated that similar notifications were issued during the past two years also, but no further action, as contemplated under Section 27 of the Act, was undertaken, and it is complained that the present notification is issued by misusing the power under the relevant provision.

On behalf of the respondents, a detailed counter-affidavit is filed. It is stated that the vast extent of area in the State of Andhra Pradesh is brought under cultivation of cotton, and that in the recent past, the farmers resorted to Bt. Variety of Cotton. The respondents state that the scientific study by Scientists and Agronomists revealed that use of Synthetic Pyrethroids on Bt. Cotton is not advisable up to the second fortnight of September of the year. Reference is made to a note, submitted by the Principal Scientist (Cotton), of a Government Research Farm, at Guntur, which is to the effect that the use of Synthetic Pyrethroids during that period would become counter-productive, and the prohibition would prevent upsurge in pink bollworm activity.

Sri S. Niranjan Reddy, learned counsel for the petitioners, submits that the selective prohibition of Synthetic Pyrethroids for a limited period, in the State of Andhra Pradesh, can not be supported either in law, or on facts. He contends that the power under Section 27 of the Act can be exercised, only where the use of insecticides is found to have resulted danger to human beings and animals, and such a reason was not even stated in the impugned notification. He submits that even if the report relied upon by the respondents is taken as the basis, it does not fit into the scheme of the Act.

Learned Government Pleader for Agriculture, on the other hand, submits that vast extent of land is brought under cultivation of cotton crop, and more than 50% of it, is under Bt. variety.

He contends that indiscriminate use of Synthetic Pyrethroids has not only increased the cost of cultivation, but also has resulted in drastic decrease in yield, leading to suicide of large number of farmers. Learned counsel submits that the prohibition was imposed on the basis of a scientific data, and that no exception can be taken to the

impugned notification.

The manufacture and sale of insecticides is governed by the provisions of the Act and the Rules made thereunder. Apart from prescribing the procedure for grant of licences and renewal thereof, and the standards to be maintained, the Act empowers the Central Government to prohibit the use of insecticides, initially for a limited period of 60 days, and thereafter to cancel the licences, depending upon the study undertaken therefor. Section 27 of the Act reads as under:

> **Sec.27: Prohibition of sale, etc., of insecticides for reasons of public safety:-**
>
> (1) If, on receipt of a report under Section 26 or otherwise, the Central Government or the State Government is of opinion, for reasons to be recorded in writing, that the use of any insecticide specified in sub-clause (iii) of clause (e) of Section 3 or any specific batch thereof is likely to involve such risk to human beings or animals as to render it expedient or necessary to take immediate action then that Government may, by notification in the Official Gazette, prohibit the sale, distribution or use of the insecticide or batch, in such area, to such extent and for such period
> (not exceeding sixty days) as may be specified in the notification pending investigation into the matter:
>
> Provided that where the investigation is not completed within the said period, the Central Government or the State Government, as the case may be, may extend it by such further period or periods not exceeding thirty days in the aggregate as it may specify in a like manner.
>
> (2) If, as a result of its own investigation or on receipt of the report from the State Government, and after consultation with the Registration Committee, the Central Government, is satisfied that the use of the said insecticide or batch is or is not likely to cause any such risk, it may pass such order (including an order refusing to register the insecticide or canceling the certificate or registration, if any, granted in respect thereof), as it deems fit, depending on the circumstances of the case".

In the instant case, the, 1st respondent issued the impugned notification, prohibiting the sale, use and supply of Synthetic Pyrethroids in the State of Andhra Pradesh, for a period of 60 days. Similar exercise was undertaken in the year 2005 and 2006.

In the year 2005, the 1st respondent issued proceedings dated 27-04-2005, prohibiting the sale and supply of Synthetic Pyrethroids from 01-05-2005 to 31-08-2005, and thereafter it was extended until 15-10-2005. W.P.No.19896of 2005 was filed by one of the manufacturers of Synthetic Pyrethroids. That writ petition was allowed, on the ground that the orders impugned therein, were not in accordance with Section 27 of the Act. It was only in the year 2006, that the Government issued a notification under Section 27 of the Act, which is similar to the notification impugned in this writ petition. A writ petition was filed against that notification, and the interim order came to be passed, only on the last date, on which, the validity of the notification was to expire.

It is true that the 1st respondent is vested with the power under Section 27 of the Act, to issue notification prohibiting the sale, supply and use of a named insecticide. The circumstances, under which such prohibition can be imposed, are stated in the Section itself, *viz*., when the insecticides are found to be dangerous to the life of human beings, or animals. The impugned notification is silent as to the reason, on account of which, the temporary ban was imposed. The reasons stated in the counter-affidavit, do not squarely fit into those, mentioned in the Section. However, they cannot be said to be totally alien to the purport of the provision. The period, during which the prohibition is imposed, is to be utilized in examining the various aspects, mentioned in Section 27. The exercise so undertaken can either entail in

cancellation of licences, or dropping further action. This much, however, can be said that the temporary prohibition contemplated under sub-section (1) of Section 27 cannot be imposed just for the sake of it, without undertaking the further steps mentioned in sub-section (2). Further, if the subsequent steps under that provision are not taken, the prohibition imposed for 60 days through a notification under

sub-section (1) cannot be ordered once again, unless the contingency mentioned in Section 27 had arisen in the interregnum. Indiscriminate use of power under Section 27, just to prohibit the sale and distribution of insecticide for 60 days without taking the further steps, mentioned in that Section; is prone to be treated as misuse, or colorable exercise, of power.

The record discloses that a recent report submitted by the Principal Scientist of an Agricultural Research Station constituted the basis. Whether or not, it should entail in cancellation of the licence for the product, or in any other action, as contemplated under law; is a matter that needs to be considered before the period of ban expires. If the analysis and other steps are to be carried out, even after the expiry of that period, it can be continued, but without prolonging the prohibition. Further, unless a final order, as contemplated under Section 2, is passed, in pursuance of the impugned order, prohibition under Section 27 of the Act cannot be imposed once again, under the same set of facts.

For the foregoing reasons, the writ petitions are disposed of, directing that the respondents shall decide about the final steps to be taken in pursuance of the impugned order, in accordance with Section 27 of the Act, and they shall not be entitled to continue, or re-impose the prohibition through similar notification, unless the chemical

analysis undertaken, in pursuance of the impugned order, or any subsequent events warrant the same. It shall also be open to the petitioners to supply such material to the respondents, as is likely to show light upon the subject.

There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt.11-09-2007.

Note:
L.R copy to be marked.
(B/O)
*KO**